

## CONFIDENTIALITY AND INDEMNITY AGREEMENT

This Confidentiality and Indemnity Agreement ("Agreement") is made and entered into on September 4, 2009, by and between Open Source Yoga Unity, a California corporation ("OSYU"), and \_\_\_\_\_, an Individual ("Member").

### RECITALS

WHEREAS, pursuant to OSYU policies, OSYU has agreed to provide the Confidential Settlement Agreement ("CSA"), executed in May 2005, between OSYU and Bikram Choudhury, at Member's request upon Member's admission as a member of OSYU.

WHEREAS Member understands that, from the perspective of one or more party to the CSA, public disclosure of the contents of the CSA could have perceived adverse consequences to one or more party to the CSA.

NOW, THEREFORE, in consideration of the mutual promises set forth in this Agreement and other valuable consideration, OSYU and Member agree as follows:

### ARTICLE I

#### INDEMNIFICATION OF INDEMNITEES

Section 1.1. **Indemnification.** Subject to OSYU's compliance with the provisions of Article II of this Agreement, Member agrees, subject to the exception set forth in paragraph 1.2 of this Article, to indemnify and hold harmless OSYU against any and all costs, losses, liabilities, expenses (including reasonable attorney's fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred in connection with third-party claims against OSYU (collectively, "Losses") that result from:

**(a) Any act or omission of Member, whether negligent or willful, that constitutes a breach of the CSA, including, but not limited to, the public disclosure, transfer, sharing, or communicating to third parties the contents of the CSA.**

Section 1.2. **Exception.** Member, in his or her discretion, may pay to OSYU costs and expenses actually and reasonably incurred in the defense of any claim indemnified under this Agreement in advance of the final disposition of the claim, upon receipt of a written undertaking by OSYU to repay any such payments to Member at any time it is determined that OSYU is not entitled to indemnification under this Agreement with respect to the claim.

## ARTICLE II

### ACTIONS OF OSYU WITH RESPECT TO CLAIMS

Section 2.1. **Actions of OSYU with Respect to Claims.** With respect to any claim made or threatened against OSYU, or compulsory process or request served upon OSYU, for which OSYU is or may be entitled to indemnification under Article I, OSYU shall:

- (a) give written notice to Member of the claim within twenty (20) days after the claim is made or threatened, which notice must specify in reasonable detail the nature of the claim and the amount (or an estimate of the amount) of the claim;
- (b) provide to Member any information and cooperation with respect to the claim as Member may reasonably require, including, without limitation, making appropriate personnel available to Member at such times as Member requests;
- (c) cooperate and take all steps as Member may reasonably request to preserve and protect any defense to the claim;
- (d) in the event suit is brought with respect to the claim, upon reasonable prior notice, afford to Member the right, which Member may exercise in his or her sole discretion and at its expense, to participate in the investigation, defense, and settlement of the claim;
- (e) neither incur any material expense to defend against nor release or settle the claim or make any admission with respect to the claim (other than routine or incontestable admissions or factual admissions which the failure to make would expose OSYU to unindemnified liability) without the prior written consent of Member, provided that Member shall have advised OSYU that OSYU is entitled to be indemnified under this Agreement with respect to such claim;
- (f) upon reasonable prior notice, afford to Member the right, in Member's sole discretion and at its expense, to control the defense of the claim, including, without limitation, the right to designate counsel and to control all negotiations, litigation, arbitration, settlements, compromises, and appeals of the claim; provided, that Member shall have advised OSYU that OSYU is entitled to be indemnified under this Agreement with respect to the claim; and provided that if OSYU and Member reasonably determine that counsel designated by Member has a conflict of interest, Member must pay the fees and disbursements of one separate counsel in any jurisdiction where there is an action or proceeding, and further provided, that prior to entering into a final settlement or compromise, Member must use its best efforts in light of the then prevailing circumstances (including, without limitation, any express or implied time constraint on any pending settlement offer) to consult with OSYU as to the terms of settlement or compromise and must use its best efforts to incorporate suggested modifications if the modifications: (i) would reduce the risk to OSYU of liability not indemnified under this Agreement; and (ii) would not materially adversely affect OSYU.

## ARTICLE III

### CONFIDENTIAL

Section 3.1. **Confidential.** Member expressly warrants, represents and agrees to keep the terms of the CSA completely confidential. The terms of the CSA shall not be disclosed in any manner whatsoever to any third party, except as provided for in the CSA.

## ARTICLE IV

### CONDITION PRECEDENT; EFFECTIVE DATE

Section 4.1. **Condition Precedent; Effective Date.** This Agreement to indemnify is conditioned on execution by Member of the membership application and payment of membership fees referenced in this Agreement, on or before the date of this Agreement. This Agreement will become effective at the commencement of Member's membership, which shall be the date that membership fee is deposited into OSYU's bank and/or the availability of funds is confirmed.

## ARTICLE V

### MISCELLANEOUS PROVISIONS

Section 5.1. **Binding Effect.** This Agreement will bind and inure to the benefit of each party's principals, agents, representatives, employees, officers, directors, shareholders, partners, affiliated and subsidiary companies, and attorneys; all persons acting through, under the authority of, or in concert with any of them; and their successors, assigns, heirs, executors, and administrators.

Section 5.2. **Entire Agreement.** This Agreement contains the entire agreement between the parties respecting the matters set forth in the Agreement and supersedes all prior agreements between the parties respecting those matters.

Section 5.3. **Modification; Assignment.** No amendment or other modification, rescission, release, annulment, or assignment of any part of this Agreement will be effective except pursuant to a written agreement subscribed by the duly authorized representatives of OSYU and Member. No assignment of this Agreement or any portion of it will be effective as to any discharge or release unless specifically provided for in an instrument of consent to the assignment.

Section 5.4. **Waiver.** Member may waive rights, powers, or privileges under this Agreement; provided, that any waiver must be in writing; and further provided, that no failure or delay on the part of Member to exercise any right, power, or privilege under this Agreement will operate as a waiver of that right, power, or privilege, nor will any single or partial exercise of any right, power, or privilege under this Agreement preclude any other or further exercise of that right, power, or privilege, or the exercise of any other right, power, or privilege by Member under the terms of this Agreement, nor will any such waiver operate or be construed as a future waiver of such right, power, or privilege under this Agreement.

Section 5.5. **Severability.** If any provision or portion of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions will nevertheless continue in full force and effect without being impaired or invalidated in any way; provided, however, that there shall be deemed to be made in any invalid or unenforceable provision or portion of an invalid or unenforceable provision any minor changes, and only those minor changes, as are necessary to make it valid and enforceable.

Section 5.6. **Captions.** Any captions to the sections or subsections of this Agreement are solely for the convenience of the parties, are not a part of this Agreement, and shall not be used for the interpretation or determination of validity of this Agreement, or any provisions of this Agreement.

Section 5.7. **Further Assurances.** In addition to the instruments and documents to be made, executed, and delivered pursuant to this Agreement, the parties to this Agreement agree to make, execute, and deliver or cause to be made, executed, and delivered to the requesting party any other instruments and to take any other actions as the requesting party may reasonably require to carry out the terms of this Agreement and the transactions contemplated by this Agreement.

Section 5.8. **Notices.** Any notice that a party is required or may desire to give the other must be in writing and may be sent by personal delivery or by mail (either: (i) by United States registered or certified mail, return receipt requested, postage prepaid, or (ii) by electronic mail, addressed as follows (subject to the right of a party to designate a different address for itself by notice similarly given):

To OSYU:

Brandon Hartsell  
c/o Law Office of David S. Barrett  
117 'J' Street, Suite 300  
Sacramento, CA 95814

[contact@yogaunity.org](mailto:contact@yogaunity.org)

To Member:

\_\_\_\_\_ [Name]  
\_\_\_\_\_ [Address]  
\_\_\_\_\_  
\_\_\_\_\_ [email]

Any notice so given by mail will be deemed to have been given as of the date of delivery (whether accepted or refused) established by United States Post Office return receipt or by the overnight carrier's proof of delivery, as the case may be. Any notice not so given will be deemed given when it is received by the party to whom it is to be given.

Section 5.9. **Attorney's Fees.** In the event of any litigation or arbitration to enforce the terms of this Agreement, the prevailing party in the litigation or arbitration is entitled to recover from the other party the prevailing party's costs of litigation or arbitration, including without limitation reasonable attorney's fees.

Section 5.10. **Governing Law; Consent to Jurisdiction.** This Agreement is to be construed and enforced under, in accordance with, and governed by, the laws of the State of California. Each of the parties to this

Agreement irrevocably consents to any suit, action, or proceeding with respect to this Agreement being brought in the State of California.

Section 5.11. **Consents.** The persons signing this Agreement represent and warrant that they have the necessary power, consent, and authority to execute and deliver this Agreement on behalf of each of the parties.

Section 5.12. **Execution in Counterparts.** This Agreement may be executed in any number of counterparts and by each party to the Agreement on separate counterparts, each of which when so executed and delivered will be deemed an original and all of which taken together will constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized representatives on the date first above written.

OPEN SOURCE YOGA UNITY

MEMBER

By: \_\_\_\_\_  
Brandon Hartsell, President

\_\_\_\_\_ [Signature]

\_\_\_\_\_ [Print name]

Date: \_\_\_\_\_

Date: \_\_\_\_\_